

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

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| In the Matter of the Petition for Early Termination of Probation of: | ) | Case No. 26-2008-195339 |
|  | ) |                         |
| WALTER HYUN KIM, M.D.  | ) | OAH No: L2009061005     |
|  | ) |                         |
| Physician's & Surgeon's  | ) |                         |
| Certificate No. A 86185  | ) |                         |
|  | ) |                         |
|  | ) |                         |
| Respondent.  | ) |                         |
| _____  | ) |                         |

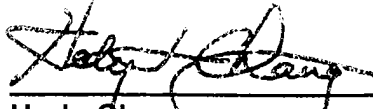
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 22, 2010.

ORDERED February 17, 2010

MEDICAL BOARD OF CALIFORNIA

  
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Hedy Chang  
Panel B Chair

**BEFORE THE  
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DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for  
Early Termination of Probation of:**

**Case No. 26-2008-195339**

**WALTER HYUN KIM, M.D.,**

**OAH No. L2009061005**

**Petitioner.**

**PROPOSED DECISION**

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, on November 17, 2009, at Los Angeles, California.

Walter Hyun Kim, M.D. (Petitioner) was present and represented himself.

Pursuant to the provisions of Government Code Section 11522, the Attorney General of the State of California was represented by Richard D. Marino, Deputy Attorney General.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

**FACTUAL FINDINGS**

The Administrative Law Judge makes the following factual findings:

1. Petitioner is the holder of Physician and Surgeon's Certificate Number A 86185. The license will expire on March 31, 2010, unless renewed.

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2. Petitioner graduated from Loma Linda University School of Medicine in 2001. On February 5, 2003, while he was in a residency program, he submitted to the Medical Board of California (California Board) an application for a physician's and surgeon's certificate. He disclosed on his application a 2003 conviction for driving under the influence of alcohol, but failed to disclose a similar conviction he had suffered in 1992. Pursuant to a Decision and Order effective February 18, 2004, based on a stipulation, the Board granted the application and issued the certificate on a three-year probationary basis, subject to various terms and conditions including but not limited to abstention from alcohol consumption and submission to biological fluid testing.

3. Respondent's California licensure was granted too late for him to complete his residency in California, and he was asked to leave his residency program.

4. Petitioner was later accepted into a residency program at the University of Iowa, and he moved to Iowa to complete his residency. On May 19, 2004, he entered into a Consent Agreement with the Board of Medical Examiners of the State of Iowa (Iowa Board) according to which he was granted an Iowa resident physician license under terms and conditions similar to those imposed by the California Board, including but not limited to abstention from alcohol consumption.

5. Following his licensure in Iowa, Petitioner consumed alcohol on at least two occasions, and the Iowa Board filed a Statement of Charges against him. That action was resolved on November 3, 2004, by a Settlement Agreement and Final Order according to which Petitioner was placed on probation for the duration of his resident physician license term (one year) and was required to comply with various terms and conditions including but not limited to abstention from alcohol consumption, submission to biological fluid testing, substance abuse treatment by an addictionologist, aftercare counseling, and participation in at least 10 aftercare meetings of Alcoholics Anonymous (AA) or a similar organization.

6. Prior to entering into the settlement referenced in Factual Finding 5, above, Petitioner entered and successfully completed a 50-day inpatient alcohol rehabilitation program. Petitioner's sobriety date is August 14, 2004.

7. Petitioner attributed his relapse in Iowa to the stress of being a stranger from California in another state, the shame and guilt he associated with his reason for being there, loneliness, and his lack of skills and strategies to manage the stress he was experiencing. Because he was an alcoholic, he "just gave in." (Petitioner's term.)

8. Petitioner returned to California in 2005, upon completion of his residency program in Iowa.

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9. On November 14, 2005, the California Board filed an Accusation and Petition to Revoke Probation against Petitioner based on his failure to abstain from alcohol and on the discipline imposed on him by the Iowa Board. In a Decision effective July 28, 2006, based on a stipulated settlement, Respondent's probationary license was revoked. The revocation was stayed, and his license was placed on probation for the remainder of the probationary term plus five additional years. Included in the terms and conditions of probation were abstention from the use of alcohol, submission to biological fluid testing, and participation in the California Board's Diversion Program.

10. Petitioner was in full compliance with all of the requirements of the Diversion Program at the time of the program's termination in July 2008.

11. Since being placed on probation the second time in California in July 2006, Petitioner has submitted to biological fluid testing between four and six times each month. Every test has been negative.

12. Petitioner has complied with all other terms and conditions of his probationary order.

13. Petitioner believes he has established "a new way of living." He continues to regularly attend two to three AA meetings per week, and he enjoys the support of his family, his friends and his sponsor. He also benefits from a strong spiritual life associated with his church.

14. For the past four years, Petitioner has worked in nuclear medicine. However, he has been precluded from taking his nuclear medicine boards because of his having been disciplined in two states. His inability to sit for his boards has resulted in a substantial financial hardship because most institutions require board certification. In addition, the nuclear medicine field is one that offers few employment opportunities because many of its modalities and procedures have been moved to other disciplines.

15. Because of the difficulties he experienced in nuclear medicine, Petitioner worked for a brief time in a medicinal cannabis clinic in Hollywood, and then accepted employment in an alternative cancer treatment clinic in Santa Barbara. He does not anticipate remaining in that position for long because the compensation is mediocre, and he feels limited by what he can do with alternative treatment.

16. Petitioner desires to undertake another residency program, this time in internal medicine, followed by a fellowship in oncology. In more than 15 interviews for internal medicine residency programs, the interviewers' main concern has been Petitioner's probationary status with the California Board.

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17. Petitioner recognizes that, as an alcoholic, he will remain at risk of drinking for the rest of his life. However, his trigger for drinking was stress, and he has now, through his recovery program, developed the skills and strategies to handle stressful situations that before, would have resulted in his turning to alcohol for stress relief.

## LEGAL CONCLUSIONS

1. Petitioner bore the burden of proving both his rehabilitation and his fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.) Petitioner's burden required a showing that he was no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395.)

2. Petitioner sustained his burden of proof and has established, by clear and convincing evidence to a reasonable certainty, that cause exists to grant the Petition under the provisions of Business and Professions Code section 2307, subdivisions (a) and (b)(3), by reason of Findings 2 through 17.

3. Business and Professions Code section 2307, subdivision (e) states in relevant part:

The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

4. Petitioner's disciplinary actions, both in California and in Iowa, were directly related to his alcohol dependence. Petitioner has undergone treatment for that dependence, and he has taken strong action toward his rehabilitation through an inpatient rehabilitation program, AA, his family, his friends and his church. He has been sober since August 2004, and has proven his sobriety between four and six times each month since July 2006, through biological fluid testing as ordered by the California Board.


5. Petitioner has now been on probation in California since February of 2004. He has complied with all terms and conditions of probation since being placed on probation the second time in July 2006. No further purpose will be served by requiring him to remain on probation for the remainder of the probationary period.

**ORDER**

**WHEREFORE, THE FOLLOWING ORDER is hereby made:**

The Petition of Walter Hyun Kim, M.D. for early termination of his probation is granted.

DATED: December 2, 2009

  
H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings